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OFFICE OF PETITIONS

In re Application of:
MEYER et al.
Application No. 09/074,544
Filed: May 8, 1998
Attorney Docket No. 001580-472

DECISION
DISMISSING PETITION

This is a decision on the petition, filed December 13, 2004, which is being treated as a petition under 37 CFR 1.181 (no fee) requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within two (2) months from the mail date of this decision. *Note* 37 CFR 1.181(f). The request for reconsideration should include a cover letter and be entitled as a "Renewed Petition under 37 CFR 1.181 to Withdraw the Holding of Abandonment."

This application became abandoned as a result of petitioner's failure to take appropriate action in a timely manner after the decision of July 26, 2004 by the Board of Patent Appeals and Interferences. Therefore, the proceedings as to the rejected claims were terminated. *See* 37 CFR 1.197(b). As no claim was allowed, the application became abandoned on September 27, 2004. *See* MPEP 1214.06.

A petition to withdraw the holding of abandonment was filed on December 13, 2004, alleging that applicants timely responded to the Board decision with an RCE, its requisite fee and a submission in the form an amendment presenting new claims. Office records reflect a RCE fee of \$770 being charged in September 2004. However, there is no evidence of the timely filing of an RCE or the amendment. In fact, the RCE and the amendment are absent from the record. Accordingly, absent the required evidence to establish a timely response to the Board decision was filed, the petition requesting withdrawal of the holding of abandonment cannot be granted at this time.

If petitioner seeks reconsideration under 37 CFR 1.181, please provide copies of the RCE and amendment that petitioner stated were timely submitted in response to the Board decision of July 26, 2004. Additionally, see MPEP 711.03(c)(I)(B) for guidance on how to establish a timely response was filed.

If petitioner cannot supply the evidence necessary to withdraw the holding of abandonment, or simply does not wish to, petitioner should consider filing a petition under 37 CFR 1.137(b) stating that the delay was unintentional. Public Law 97-247, § 3, 96 Stat. 317 (1982), which revised patent and trademark fees, amended 35 U.S.C. § 41(a)(7) to provide for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of the issue fee was "unavoidable." This amendment to 35 U.S.C. § 41(a)(7) has been implemented in 37 CFR 1.137(b). An "unintentional" petition under 37 CFR 1.137(b) must be accompanied by the \$1500 petition fee.

The filing of a petition under 37 CFR 1.137(b) cannot be intentionally delayed and therefore must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Denise Pothier at (571) 272-4787.



Frances Hicks
Lead Paralegal
Office of Petitions